

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

REPLY BRIEF FOR THE APPELLANT

Michael NAESBY

SMALL TRIPLEX FORMING PNA OLIGOS

Serial No. 09/137,822  
Filed: August 21, 1998  
Appeal No.:  
Group Art Unit: 1655




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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the application of:

Michael NAESBY

Serial Number: 09/137,822

Filed: August 21, 1998

For: SMALL TRIPLEX FORMING PNA OLIGOS



Appeal No.

Examiner: J. Enewold

Group Art Unit: 1655

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Brief in Reply to the Examiner's Answer **TECH CENTER 1600/2900**

Assistant Commissioners of Patents  
Washington, DC 20231

March 1, 2000

Introduction

The following is in response to the Examiner's Answer mailed January 3, 2001.

Rejection of Claims 31-85 Under 35 U.S.C. § 112, first paragraph

The Examiner maintains that the phrases "the aggregate" and "aggregate binding region" constitute new matter. The Examiner in particular states that the term aggregate carries meanings that are not supported by the specification. Appellants respectfully submit that the Examiner has missed the point with respect to the issue of new matter. Appellants urge that the relevant legal issue is not whether all possible meanings of a term are supported by the disclosure, but rather whether the disclosure including the specification and claims indicate

that at the time of invention the inventors had possession of the claimed subject matter.

Appellants submit that the Examiner has not met this legal standard. Appellants have made specific reference to teachings and figures of the specification that demonstrate possession of the "aggregate" of two or more probes that make up probe C and that is consistent with the common definitions of "aggregate" as set forth in the Webster's II Riverside University Dictionary ("Webster's II") (Exhibit A)<sup>1</sup> and the Stedman's Medical Dictionary (Exhibit B) (see Appeal Brief at pages 8-10). However, the Examiner has continuously and improperly ignored Appellants' definition of "aggregate" as supported by the specification. Instead, the Examiner has relied on other less common definitions and selectively focused on certain exotic definitions of "aggregate" without engaging in any discussion whatsoever as to whether in view of the common definition of "aggregate", the specification and claims evidence possession of the operation of the two or more probes (e.g., C1 and C2) acting **as a whole** when binding to the nucleic acid A as has been asserted by Appellants. Appellants submit that this is particularly troublesome since the Examiner acknowledges that the specification discloses that two or more probes can be used together (see Examiner's Answer at pages 4-5).

Appellants have previously noted the definition of "aggregate" as it is found in the **generic** "Webster's II" dictionary. By **generic** Appellants mean that the dictionary is not tailored to any specific discipline, for instance medicine. The

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<sup>1</sup> Please also see the definition of "aggregate" as found in the Merriam-Webster On-line Collegiate Dictionary (m-w.com) (Exhibit C).

various definitions of "aggregate" appearing in this dictionary source focus on the concept of treating a total mass, sum or whole with reference to its constituent parts or units. Appellants note that the most revealing omission by the Examiner is the complete failure to specifically address Appellants' arguments with respect to this common definition and specifically explain why the teachings of the specification as set forth by Appellants are inconsistent with this definition (see Appeal Brief at pages 8-10). Rather than specifically address Appellants' arguments, the Examiner for some unexplained reason has continued to address only certain other less relevant definitions while proffering a new and irrelevant definition of "aggregate" that pertains to the field of zoology.

Appellants note that the Examiner has continuously relied on the Stedman's definition which indicates that "aggregate" means "[t]o unite or come together in a mass or cluster." (see Examiner's Answer dated January 3, 2001 at page 5; Office Action dated March 10, 2000 at page 2). Indeed, the Examiner has continuously ignored the other definition of Stedman's which states that the term "aggregate" means the "[t]he total of individual units making up a mass or cluster". Ignoring such definition, the Examiner asserts that the specification does not describe or discuss "aggregates" and therefore the description does not support "aggregate" (see Examiner's Answer at page 4; Office Action of March 10, 2000 at page 2). However, Appellants note that the Examiner concedes that 1) "[t]he specification instead describes a triple stranded binding region with two independent probes C1 and C2"; and 2) "the examiner does not disagree with

the assertion that two or more probes C may be used" (see Examiner's Answer at page 4-5). Moreover, Appellants have argued that:

the claimed invention is directed to triple stranded complexes which include one or more probes C which, in the aggregate, include a base sequence different from the base sequence of probe B. The one or more binding probes C, in the aggregate, also include an aggregate binding region which is longer as compared with the binding region of probe B. As asserted during prosecution of the present invention, the language "aggregate" and "aggregate binding region" indicates that there can be more than one probe C binding to nucleic acid A where probe B is bound. In other words, at the location where probe B is bound to nucleic acid A, it is not required that one continuous strand of probe C binds to nucleic acid A. Instead, there can be several different probes C which bind to different regions of nucleic acid A at the same time;

and

the specification at page 17, bottom paragraph teaches that where the two probes C1 and C2 are used, the two can act together to promote the binding of a probe B to the nucleic acid A." (see Appeal Brief at pages 8-9).

Appellants submit that in view of the Examiner's admissions as well as the express teachings of the specification, it is clear that definition of Stedman's not considered by the Examiner is particularly relevant to the claimed subject matter because the **total of** the two or more **individual** probes C (e.g., C1 and C2) represent the **units** that make up the **mass** (the aggregate of the probes) that **act together** to promote the binding of a probe B to the nucleic acid A as specifically described by Appellants' application. It is therefore clear that such a definition is entirely consistent with the description of the invention, and consequently, its inclusion in the claims does not constitute new matter.

Nevertheless, the Examiner has conveniently and improperly avoided addressing the relevant legal issue by avoiding any discussion of Appellants' definition for "aggregate" as supported by the specification. Instead, the Examiner has selectively relied on one of the two possible definitions of "aggregate" found in the Stedman's dictionary in maintaining the rejection. Moreover, the Examiner has now provided a newly cited definition of "aggregate" that supposedly originates from the Merriam-Webster's **Medical Desk** Dictionary but instead is from an unidentified on-line Medical Dictionary source (Exhibit D) (See Examiner's Answer dated January 3, 2001 at page 5).<sup>2</sup> Appellants note that since the claimed invention is not specifically related to the field of medicine or medical devices, it is unclear as to why the Examiner persistently relies on **medical** dictionaries and their more exotic and specific definitions, as compared with more common definitions for the term "aggregate". Appellants note in particular that the Examiner has advanced no reason for the absolute reliance on such exotic definitions to the complete **exclusion** of any discussion regarding the more common and general definition offered by Appellants as found in Webster's II dictionary.

Appellants submit that not only are they unable to confirm the source of the Examiner's newly articulated definition of "aggregate", but that such definition

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<sup>2</sup> Appellants were unable to find the source for this Webster On-line **Medical** Dictionary since there is no indication of source on the page and the URL was not of sufficient clarity to perform verification. Although Appellants have been unable to locate this on-line source submitted by the Examiner, Appellants refer to the Merriam Webster On-Line Dictionary which is the most closely related on-line source that Appellants are able to access. It is clear from this dictionary source that "aggregate" refers to treating a number of units or parts as a whole as Appellants have continuously argued is meant by the claim language and fully supported by the written description of the invention.

is clearly identified as being related to zoology. Such relationship to zoology is clear given the marking <zoology> as well as the terms "subgenus", "genus" and "subspecies" which are included in the definition. Although it is agreed that this newly asserted definition does not shed light on any interpretation of the claimed subject matter and its associated description, Appellants do not understand why the Examiner would seek to rely on a **medical** definition that pertains to the field of **zoology** when evaluating the non-medical claimed subject matter as compared with relying on a common definition for "aggregate". Appellants submit that if the more common definition is applied,<sup>3</sup> it is patently clear that the specification fully supports this choice of descriptive language for articulation of the claimed subject matter.

Therefore, Appellants urge that the Examiner has failed to set forth any reason for the improper and absolute reliance on exotic and discipline specific definitions to the exclusion of more common definitions as supported by the specification. Appellants urge that their arguments proffered during prosecution and on appeal are correct, and accordingly, the rejection should be withdrawn.

#### Rejection of claims 31-85 under 35 U.S.C. § 112, second paragraph

The Examiner maintains that the phrase "in the aggregate" lacks antecedent basis. The Examiner in particular states that Appellants' Appeal Brief does not address the basis for such rejection. Appellants submit that this is incorrect. Appellants have specifically argued this issue in their assertions that

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<sup>3</sup> Such as those found in Webster's II New Riverside University Dictionary, Stedman's Medical Dictionary and Merriam-Webster's On-line Collegiate Dictionary (m-w.com).

those of skill in the art would understand the meaning of the phrases "the aggregate" and "aggregate binding region" as used in the context of the claims and considered in light of the teachings of the application as filed (see the Appeal Brief at page 11). Appellants furthermore urge that this rejection be resolved in Appellants' favor as the phrases "the aggregate" and "aggregate binding region" do not constitute new matter (see RESPONSE UNDER 37 C.F.R. § 1.116 dated June 28, 2000 at page 23). Appellants submit that neither the phrase "in the aggregate" or "aggregate binding region" constitute new matter, and therefore, the specification necessarily provides antecedent basis for the phrase "in the aggregate".

Rejection of Claims 31-85 Under 35 U.S.C. § 112, second paragraph

The Examiner maintains that the phrase "an aggregate binding region" is unclear. The Examiner in particular argues that so long as more than one definition exists for a claim term or phrase, that term or phrase is *prima facie* indefinite (see Examiner's Answer at page 6). Appellants note that not only does the Examiner cite no authority for such a statement of law, but that the Examiner is clearly in error.

The law pursuant to 35 U.S.C. § 112, second paragraph clearly requires that in determining whether the claims describe the invention with a reasonable degree of certainty, the claim language must be analyzed in light of the specification as filed and the teachings of the prior art (see MPEP § 2173.05(a); *In re Moore*, 439 F.2d 1232, 169 U.S.P.Q. 236 (C.C.P.A. 1971)). Appellants note



that given such a legal requirement, it is irrelevant whether a particular claim term or phrase has more than one or even hundreds of possible definitions. The issue that must be determined is whether the claim term or phrase is clear in view of the description of the invention set forth in the specification.

Nevertheless, the Examiner cursorily provides two definitions for the term "aggregate" and argues that the claim must be unclear. Appellants submit that such a statement not only ignores the relevant legal standard, but amounts to the complete absence of consideration regarding more common definitions for "aggregate" with respect to the teachings of the specification and the prior art. Appellants therefore submit that the rejection is improper as it does not address the proper legal standard for determining whether claim language is indefinite.

Appellants also note that the Examiner baldly asserts that "the examiner has offered evidence why the term was indefinite, namely, it is unclear whether the aggregate binding region is located on nucleic acid A or located on nucleic acid C and what physical and chemical features define the aggregate binding region." (see Examiner's Answer at page 6). However, Appellants submit with all due respect that such comments do not amount to evidence, but rather **questions<sup>4</sup>** which have been answered more than once by Appellants with reference to facts and evidence as disclosed by the instant specification (see Appeal Brief at pages 12-13; RESPONSE UNDER 37 C.F.R. § 1.116 dated June

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<sup>4</sup> Since they are mere questions, they stand as bald assertions that are not supported by fact or evidence and are therefore not a proper basis to support a rejection. See *In re Sichert*, 566 F.2d 1154, 1164, 196 U.S.P.Q. 209, 217 (C.C.P.A. 1977).

28, 2000).<sup>5</sup> Appellants note that by specifically answering such questions, the burden shifts to the Examiner to explain why the referenced teachings of the specification do not render the claims definite under 35 U.S.C. § 112, second paragraph (*In re Moore*, 58 C.C.P.A. 1042, 439 F.2d 1232, 169 U.S.P.Q. 236 (C.C.P.A. 1971)). Therefore, the instant rejection is clearly in error as the Examiner has not only ignored the relevant legal standard, but completely ignored the express teachings of the specification as set forth by Appellants.

Rejection of claims 31-85 under 35 U.S.C. § 102(b)

The Examiner maintains that certain claims are rejected under 35 U.S.C. § 102(b) as being anticipated by Svinarchuk et al. (J. Biol. Chem. 1995, Vol. 270(23), pages 14068-71). Appellants note that the Examiner's clarification with respect to which claims are presently rejected under 35 U.S.C. § 102(b) is much appreciated (see Examiner's Answer at page 8).

Nevertheless, Appellants submit that that the instant rejection should be withdrawn. Appellants note that the Examiner implies that the insertion of a size limitation for nucleic acid binding probe C would obviate the rejection since the

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<sup>5</sup> The specification is part of the record. See *In re Wiseman*, 596 F.2d 1019, 1023, 201 U.S.P.Q. 658, 661 (C.C.P.A. 1979) (court looks to specification for support regarding applicant's claims); *In re Schulze*, 346 F.2d 600, 602, 145 U.S.P.Q. 716, 718 (C.C.P.A. 1965) ("[n]or do we find anything in the record by way of disclosure or affidavit . . ."). Moreover,

In determining whether the invention as a whole would have been obvious under 35 U.S.C. § 103, we must first delineate the invention as a whole. In delineating the invention as a whole, we look not only to the subject matter which is literally recited in the claim in question (the ratio of values) but also to those properties of the subject matter which are inherent in the subject matter and are disclosed in the specification.

*In re Antonie*, 559 F.2d 618, 619, 195 U.S.P.Q. 6, 8 (Fed. Cir. 1977) (emphasis added).

triplexes of Svinarchuk et al. are allegedly otherwise identical to the triplexes of the claimed invention (see Examiner's Answer at page 8). The Examiner also argues that a probe and nucleic acid molecule are the same but for an intended use (see Examiner's Answer at page 9).<sup>6</sup> Furthermore, the Examiner maintains that "[a] probe is simply a piece of nucleic acid and the art teaches that nucleic acids may be used as a probe" and such a "definition does not differentiate the probe of the invention from the nucleic acid of Svinarchuk" (see Examiner's Answer at page 9).

Appellants note as a preliminary matter that the Examiner's asserted definition of probe is provided without any authority whatsoever, and therefore, such a bald assertion that is entitled to no weight. *In re Sichert*, 566 F.2d 1154, 1164, 196 U.S.P.Q. 209, 217 (C.C.P.A., 1977). Appellants note that the only definition for a probe presently on record is that definition provided by Appellants that must be considered in interpreting the scope of the claims and with respect to the arguments set forth in the Appeal Brief (see Appeal Brief at page 16).

Appellants have previously noted that in determining whether the rejection is deficient it must be determined whether Svinarchuk et al. discloses the use of **two binding probes** or a **single probe**. Both Appellants and the Examiner agree that Svinarchuk et al. discloses the use of a single probe. (see Examiner's Answer at page 7; Office Action dated March 10, 2000 at page 5). Appellants have argued that "a device (as an ultrasound generator) or substance (as DNA in genetic research) used to obtain specific information for diagnostic or

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<sup>6</sup> Appellant note that this argument of "intended use" is the first time such argument has been proffered in the record but is nevertheless clearly erroneous.

experimental purposes" is a well accepted definition of probe<sup>7</sup> that is consistent with the claimed invention (see Appeal Brief at page 16). For example, the claimed invention includes a method for determining a nucleic acid A<sup>8</sup> wherein **two probes** are used to interrogate the nucleic acid A to thereby facilitate the claimed method of determination. Since the nucleic acid A is the object of the interrogation, its sequence determines the sequence and structure of the probes that will interrogate nucleic acid A and effect the determination. Since the two probes comprise a structure and function that is defined with respect to the nucleic acid A, they are not merely nucleic acid molecules of undefined structure or mere intended use as has been asserted by the Examiner.<sup>9</sup> In contrast, the Svinarchuk et al. reference discloses a **single probe** that hybridizes to a double stranded nucleic acid and thereby effects the determination of the double stranded plasmid.<sup>10</sup> Although the Examiner asserts that one of the strands of the nucleic acid analyte to be determined is a probe because it is a nucleic acid, this

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<sup>7</sup> This definition has authority in the Merriam-Webster On-line Dictionary

<sup>8</sup> The nucleic acid A is described in the specification at page 5.

<sup>9</sup> Appellants note that in practice an ordinary practitioner would design a method (e.g., claim 31) to determine a specific nucleic acid target molecule (e.g., nucleic acid A). The structure of each of the probes would be designed to produce molecules that interrogate a sample for nucleic acid A, such that the determination of nucleic acid A results in accordance with the assay. Since the structure of the probes is of defined structure (albeit defined with respect to the nucleic acid A), they are not defined only by function or intended use. Appellants note that this is clear because not any nucleic acid can be used as a probe in the assay method for a particular nucleic acid A. Rather, only select molecules of highly defined sequence are suitable.

<sup>10</sup> In stark contrast to the claimed invention, the triplex of Svinarchuk et al. differs from the claimed invention because only **one probe** has been designed to interrogate a sample for a double stranded plasmid. As previously noted, this fact has been repeatedly acknowledged by the Examiner during prosecution and is itself evidence of the Examiner's own understanding of the defining characteristics of a probe-target interaction. Hence, the triplex of Svinarchuk et al. is a composition formed from a double stranded target nucleic acid (e.g., nucleic acid analyte) and a single probe. By comparison, the triplex of the claimed invention comprises at least two probes and one strand of a nucleic acid analyte.

determination is fatally flawed because the nucleic acid strand to be determined (e.g., the nucleic acid analyte) cannot, by definition, be a probe.

Therefore, the Examiner's characterization of Svinarchuk et al. is in error in view of the accepted definition of probe and with respect to the claimed invention. The triplex of Svinarchuk et al. does not include two probes and therefore cannot anticipate the claimed invention.

### Conclusion

For all the reasons set forth herein and in the Brief on Appeal, Appellants respectfully request that the Honorable Board of Patent Appeals and Interferences reverse each rejection of the claimed invention.

Should any fees be due with respect to the filing of this paper, please charge Deposit Account No. 01-2300.

Respectfully submitted,

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## **EXHIBIT A**

WEBSTER'S II  
New Riverside  
University  
Dictionary

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## aggrandize • agony.

**aggran-dize** (ə-grin'dīz, 'grān-) vt. -dized, -dizing, -dizes. [Fr. *aggrandir*, *aggrandir* < *ag-* to (< Lat. *ad-*) + *grandir*, to grow larger < Lat. *grandis* < *grandis*, large.] 1. To increase the scope of: **EXTEND**. 2. To make greater in power, influence, or reputation. 3. To exaggerate the qualities of: **EXALT**. —**aggran'dizement** (ə-grin'diz-ment, -dīz-) n. —**aggran'dizer** n.

**ag-gra-vate** (ə-grā-vāt) vt. -vated, -vating, -vates. [Lat. *aggravare*, *aggravare*: *ad-* to + *gravare*, to burden < *gravis*, heavy.] 1. To make worse < bronchitis aggravated by smoking >. 2. Informal. To annoy < a talkative student who aggravated the teacher >. —**ag-gra-vat-ingly** adv. —**ag-gra-vat-ive** adj. —**ag-gra-vat-or** n.

**aggravated assault** n. **Law**. Any of various assaults that are more serious than a common assault, esp. one performed with intent to commit a crime.

**ag-gra-va-tion** (ə-grā-vā-shən) n. 1. The act of aggravating or state of being aggravated. 2. One that irritates or makes worse. 3. Informal. Annoyance; vexation.

**ag-gre-gate** (ə-grē-gēt) adj. [ME *aggregat* < Lat. *aggregare*, to add to: *ad-* to + *gregare*, to collect < *grex*, flock.] 1. Gathered together into a mass constituting a whole. 2. Bot. Crowded or massed into a dense cluster. 3. Composed of a mixture of minerals separable by mechanical means. —n. (grē-t). 1. A metal or whole considered with reference to its constituent parts < an empire that was the aggregate of many states >. 2. The mineral materials, as sand or stone, used in making concrete. —vt. (grē-t) -gated, -gating, -gates. 1. To gather into a mass, sum, or whole. 2. To amount to. —**ag-gre-gat-ive** adj. —**ag-gre-gat-ion** n. —**ag-gre-gat-or** n.

**aggregate fruit** n. A fruit, as the raspberry, developed from the pistils of a single flower and consisting of a mass of drupelets.



**aggregate fruit**  
Two types of aggregate fruit:  
(left) a raspberry and (right)  
a strawberry

**ag-gress** (ə-grēs) vt. -gressed, -gressing, -gresses. [Fr. *agresser* < Lat. *aggradi*, *ad-* toward + *gradi*, to go.] To commit aggression. **ag-gres-sion** (ə-grēs-shən) n. 1. Initiation of forceful, usu. hostile action against another: **ATTACK**. 2. The practice of attacking or encroaching, esp. in violation of territorial rights: **INVASION**. 3. **Psychol.** Hostile action or behavior.

**ag-gres-sive** (ə-grēs-iv) adj. 1. Hostile; combative. 2. a. Energetic and enterprising. b. Boldly assertive. —**ag-gres-sive-ly** adv. —**ag-gres-sive-ness** n.

**ag-gres-sor** (ə-grēs-ər) n. One that engages in aggression.

**ag-grieve** (ə-grīv) vt. -grieved, -grieving, -grieves. [ME *aggreven* < OFr. *agrevier* < Lat. *aggravare*, to make worse. —see **AGGRAVATE**.] 1. To distress or afflict. 2. To injure unjustly.

**aggrieved** (ə-grīvd) adj. 1. Feeling distress or affliction. 2. Treated wrongly: **OFFENDED**. 3. **Law**. Treated unjustly, as by a decision of a court. —**aggrieved-ly** (ə-grīvd-lē) adv. —**aggrieved-ness** n.

**ag-ha** (ā-gā, ā-gā) n. var. of **AGA**.

**ag-hast** (ə-gāst) adj. [ME *agast*, p.p. of *agasten*, to frighten < *ag-* (intensive) + *gasten*, to frighten < OE *gæstan* < *gæst*, ghost.] Stricken with horror: **APPALLED**.

**ag-ile** (ā-gīl, ā-gīl) adj. [OFr. < Lat. *agilis* < *agere*, to impel.] 1. Able to move quickly and easily: **NIMBLE**. 2. Mentally alert. —**ag-ile-ly** adv. —**ag-ile-ness** n. —**ag-ile-ty** (ə-gīl-ē-tē) n.

**ag-in** (ə-gīn) prep. Regional. Against.

**ag-ing** (ā-gīng) n. 1. The process of becoming old or mature. 2. An artificial process for imparting the characteristics and properties of age, as to wood.

**ag-i-o** (ā-gē-ō) n. pl. -oes. [Ital. < Med. Gk. *allagion*, exchange < *allagē*, change < *allos*, other.] 1. A premium paid for exchanging one currency for another. 2. An allowance or premium for the difference in value between two currencies being exchanged.

**ag-i-tate** (ā-gī-tāt) vt. -tated, -tating, -tates. [Lat. *agitare*, *agitare*, freq. of *agere*, to impel.] —vt. 1. To move with sudden forcefulness or violence < a hurricane agitating the trees >. 2. To upset emotionally. 3. To try to arouse public interest in (e.g., a cause). 4. Archaic. To ponder over. —vi. To stir up public interest in a cause. —**ag-i-tat-ed-ly** (tā-tid-lē) adv. —**ag-i-tat-ive** adj.

**ag-i-ta-tion** (ā-gī-tā-shən) n. 1. a. The act of agitating. b. The state of being agitated. 2. Extreme emotional disturbance: **PERTURBATION**. 3. Arousal of public interest in a cause or controversial matter. —**ag-i-ta-tion-al** adj.

**ag-i-ta-to** (ā-gī-tā-tō) adj. [Ital. < Lat. *agitare*, to agitate.] Mus. Fast and restless: **AGITATED**. —Used as a direction. —**ag-i-ta-to** adv.

**ag-i-ta-tor** (ā-gī-tā-tər) n. 1. One who agitates, esp. one who engages in political agitation. 2. A mechanism that shakes or stirs, as in a washing machine.

**ag-it-prop** (ā-gī-t-prōp) n. [R., department of agitation and propaganda: *agitatio*, agitation + *propaganda*, propaganda.] Communist-oriented political propaganda disseminated esp. through literature, drama, art, or music.

**Ag-la-ia** (ə-glā-ā, ə-glā-ā) n. [Gk. < *aglaia*, splendor < *aglaos*, bright.] Gk. Myth. One of the Three Graces.

**ag-leam** (ə-glēm) adj. & adv. Shining brightly: **CLEAMING**.

**ag-let** (ā-gīl) n. [ME < OFr. *aguille*, dim. of *aguille*, needle.] 1. A tag or metal sheath at the end of a lace, cord, or ribbon to facilitate its passing through eyelet holes. 2. An ornamental device similar to the aglet.

**ag-ley** (ə-glī, ə-glī, ə-glī) adv. [Scottish: *ag*, on + *gle*, to squint.] ME *gilen*.] Scot. Awry; amiss.

**ag-lim-mer** (ə-glīm-ər) adj. & adv. Glimmering faintly.

**ag-lit-ter** (ə-glīt-ər) adj. Glittering; sparkling. —**ag-lit-ter** adv.

**ag-low** (ə-glō) adj. & adv. Glowing.

**ag-ly-con** (ə-glī-kōn) or **ag-ly-cone** (kōn) n. A nonsugar component of a glycoside that is resolvable through hydrolysis.

**ag-mi-nate** (ā-gmī-nāt, -nāt) also **ag-mi-nat-ed** (ā-gmī-nāt) adj. [Lat. *agmin*, *agmin*, multitude.] Bot. Gathered in clusters.

**ag-nail** (ā-gnāl) n. [ME *angnail*, corn < OE *angnagel*, a sore under the nail: *ang*, tight + *nagel*, nail.] 1. A hangnail. 2. A painful swelling or sore around a fingernail or toenail.

**ag-nate** (ā-gnāt) adj. [Lat. *agnatus*, a relation on the father's side, p.p. of *agnasci*, to be born in addition to: *ad-* to + *nasci*, to be born.] 1. Related on or descended from the male or father's side. 2. From a common source: **AKIN**. —n. A relative on the male or father's side only. —**ag-nat-ic** (ā-gnāt-ik) adj. —**ag-nat-i-cal-ly** adv. —**ag-na-tion** n.

**Ag-ni** (ā-gnē) n. [Skt. *agnih*, fire.] The Vedic god of fire and guardian of humans.

**ag-nomen** (ā-gnō-men) n., pl. -nomē-na (-nōm-ə-nə) [Lat. *ag-* to + *nomen*, name.] 1. An additional cognomen given to a Roman citizen, often in honor of military victories. 2. A nickname.

**ag-no-sia** (ā-gnō-zhē) n. [NLat. < Gk. *agnōsia*, ignorance: *ag-*, not + *gnōsis*, knowledge < *gignōskō*, to know.] Pathologic loss of memory, sensory, or visual comprehension.

**ag-no-s-tic** (ā-gnōs-tik) n. [ < Gk. *agnōstos*, unknown: *ag-*, not + *gnōstos*, known < *gignōskō*, to know.] One who believes that there can be no proof of the existence of God but does not deny the possibility that God exists. —**ag-no-s-tic** adj. —**ag-no-s-ti-cal-ly** adv.

**ag-no-s-ti-cism** (ā-gnōs-ti-siz-m) n. 1. **Philos.** The doctrines of the agnostics, holding that certainty or first or absolute truths are unattainable and that only perceptual phenomena are objects of knowledge. 2. A theological theory that does not deny God but denies the possibility of knowing Him.

**Agnus Dei** (ā-gnūs dēi, ā-n'yōs dēi, ā-gnōs) n. [Lat.] 1. Lamb of God, an emblem of Christ. 2. An iconographic representation of the Agnus Dei. 3. A liturgical prayer to Christ.

**ago** (ə-gō) adj. & adv. [ME, p.p. of *agon*, to go away < OE *agan* < (intensive) + *gan*, to go.] Earlier than the present time: *ago* < three months ago > < died long ago >.

**ago-g** (ə-gō) adv. & adj. [ME *agoge* < OFr. *en gogue*, in movement.] In a state of excitement and keen agitation.

**ago-guff** var. of **ACOGUE**.

**ā-go-go** also **ā-go-go** (ā-gō-gō) adv. [Fr. *galore*.] In a fast, lively manner: **ENERGETICALLY**.

**ag-ogue** or **ag-og** suff. [LLat. *agogus* < Gk. *agogos* < *agō*, to lead.] A substance that stimulates the flow of < hemagogue > away. —see **AGO**. Archaic. Gone by: **PAST**.

**ag-on-ic** (ā-gō-nik, ā-gō-n) adj. [ < Gk. *agōnos*: *ag-*, not + *gnō*, angle.] Having no angle.

**agonic line** n. An imaginary line on the earth's surface connecting points where the magnetic declination is zero.

**ag-on-ist** (ā-gō-nist) n. [Back-formation < **ANTAGONIST**.] 1. **Physiol.** A muscle that contracts and is opposed by contraction in another muscle, the antagonist. 2. One involved in a struggle or competition.

**ag-on-is-tic** (ā-gō-nis-tik) also **ag-on-is-ti-cal** (-i-kəl) adj. [Gk. *agonistikos* < *agōnistēs*, combatant < *agōn*, contest.] 1. Argumentative; combative. 2. Struggling to achieve effect. 3. Of or relating to athletic competitions, orig. those of the ancient Greeks. —**ag-on-is-ti-cal-ly** adv.

**ag-on-ize** (ā-gō-nīz) v. -nized, -nizing, -nizes. [OFr. *agonizier* < Med. Lat. *agonizare* < Gk. *agonizesthai*, to struggle < *agōn*, contest.] —vi. 1. To be in extreme physical or emotional pain; suffer intensely. 2. To make a great effort: **STRUGGLE**. —vt. To cause pain or anguish to. —**ag-on-iz-ing-ly** adv.

**ag-ony** (ā-gō-nē) n., pl. -nies. [ME *agonie* < OFr. < Med. Lat. *agonia* < Gk. *agonia* < *agōn*, struggle.] 1. The suffering of intense physical

1 pat 1 pay 1 care 1 father 1 pet 1 be 1 how which 1 tie 1 pier 1 pot 1 toe 1 paw, for 1 oi noise 10

## aggrandize • agony.

**aggran-dize** (ə-grān'dīz, -āgrān-) vt. **-dized, -dizing, -dizes.** [Fr. *aggrandir*, *aggrandiss-*: *a-*, to (< Lat. *ad-*) + *grandir*, to grow larger < Lat. *grandire* < *grandis*, large.] 1. To increase the scope of: **EXTEND**. 2. To make greater in power, influence, or reputation. 3. To exaggerate the qualities of: **EXALT**. —**aggran'dize-ment** (ə-grān'dīz-mənt, -dīz-) n. —**aggran'diz'er** n.

**ag-gra-vate** (āgrə-vāt) vt. **-vated, -vating, -vates.** [Lat. *aggravare*, *aggravat-*: *ad-*, to + *gravare*, to burden < *gravis*, heavy.] 1. To make worse < bronchitis aggravated by smoking >. 2. Informal. To annoy < a talkative student who aggravated the teacher >. —**ag-gra-vat-ing-ly** adv. —**ag-gra-vat-ive** adj. —**ag-gra-vat-or** n.

**aggravated assault** n. Law. Any of various assaults that are more serious than a common assault, esp. one performed with intent to commit a crime.

**ag-gra-va-tion** (āgrə-vā'shən) n. 1. The act of aggravating or state of being aggravated. 2. One that irritates or makes worse. 3. Informal. Annoyance; vexation.

**ag-gre-gate** (āgrī-gīt) adj. [ME *aggregat* < Lat. *aggregare*, to add to: *ad-*, to + *gregare*, to collect < *grex*, flock.] 1. Gathered together into a mass constituting a whole. 2. Bot. Crowded or massed into a dense cluster. 3. Composed of a mixture of minerals separable by mechanical means. —n. (-gīt): 1. A total or whole considered with reference to its constituent parts < an empire that was the aggregate of many states >. 2. The mineral materials, as sand or stone, used in making concrete. —vt. (-gīt) **-gated, -gating, -gates**. 1. To gather into a mass, sum, or whole. 2. To amount to. —**ag-gre-gate-ly** adv. —**ag-gre-ga-tion** n. —**ag-gre-gat-ive** adj. —**ag-gre-gat-or** n.

**aggregate fruit** n. A fruit, as the raspberry, developed from the pistils of a single flower and consisting of a mass of drupelets.



**aggregate fruit**  
Two types of aggregate fruit:  
(left) a raspberry and (right)  
a strawberry

**ag-gres-sive** (ə-grēs'iv) vi. **-gressed, -gressing, -gresses.** [Fr. *agresser* < Lat. *aggradi*: *ad-*, toward + *gradi*, to go.] To commit aggression.

**ag-gres-sion** (ə-grēs'hən) n. 1. Initiation of forceful, usu. hostile action against another: **ATTACK**. 2. The practice of attacking or encroaching, esp. in violation of territorial rights: **INVASION**. 3. **Psychanal.** Hostile action or behavior.

**ag-gres-sive** (ə-grēs'iv) adj. 1. Hostile; combative. 2. a. Energetic and enterprising. b. Boldly assertive. —**ag-gres-sive-ly** adv. —**ag-gres-sive-ness** n.

**ag-gres-sor** (ə-grēs'ər) n. One that engages in aggression.

**ag-grieve** (ə-grēv) vt. **-grieved, -grieving, -grieves.** [ME *agreven* < OFr. *agrever* < Lat. *aggravare*, to make worse. —see **AGGRAVATE**.] 1. To distress or afflict. 2. To injure unjustly.

**ag-grieved** (ə-grēvd) adj. 1. Feeling distress or affliction. 2. Treated wrongly: **OFFENDED**. 3. Law. Treated unjustly, as by a decision of a court. —**ag-grieved-ly** (ə-grēvd-lē) adv. —**ag-grieved-ness** n.

**ag-gha** (ā'gə, ā'gə) n. var. of **AGA**.

**ag-ghost** (ə-gāst) adj. [ME *agast*, p.p. of *agasten*, to frighten: *a-* (intensive) + *gasten*, to frighten < OE *gæstan* < *gæst*, ghost.] Stricken with horror: **APPALLED**.

**ag-ile** (ā'jəl, ā'jīl) adj. [OFr. < Lat. *agilis* < *agere*, to impel.] 1. Able to move quickly and easily; **NIMBLE**. 2. Mentally alert. —**ag-ile-ly** adv. —**ag-ile-ness** n. —**ag-il-i-ty** (ə-jīl'i-tē) n.

**ag-in** (ə-gīn) prep. Regional. Against.

**ag-ing** (ā'jīng) n. 1. The process of becoming old or mature. 2. An artificial process for imparting the characteristics and properties of age, as to wood.

**ag-i-o** (ā'jē-ō) n. pl. **-oa**. [Ital. < Med. Gk. *allagion*, exchange < *allagē*, change < *allos*, other.] 1. A premium paid for exchanging one currency for another. 2. An allowance or premium for the difference

**ag-i-ta-tor** (āj'i-tā'tər) n. 1. One who agitates, esp. one who in political agitation. 2. A mechanism that shakes or stirs washing machine.

**ag-it-prop** (āj'it-prōp) n. [R., department of agitation: *ganda*: *agitatsiya*, agitation + *propaganda*, propaganda.] A Communist-oriented political propaganda disseminated esp. through literature, drama, art, or music.

**A-gla-ia** (ə-glā'ə, ə-glī'ə) n. [Gk. < *aglaia*, splendor < *aglaia* Gk. Myth. One of the Three Graces.]

**ag-leaf** (ə-glēm) adj. & adv. Shining brightly: **GLEAMING**.

**ag-let** (āglīt) n. [ME < OFr. *aguillette*, dim. of *aguille*, Lat. *acicula*, dim. of Lat. *acus*, needle.] 1. A tag or metal end of a lace, cord, or ribbon to facilitate its passing eyelet holes. 2. An ornamental device similar to the aglet.

**ag-ley** (ə-glī, ə-glā, ə-glē) adv. [Scottish: *a-*, on + *gley*, to ME *glien*.] Scot. Awry; amiss.

**ag-glim-mer** (ə-glīm'mər) adj. & adv. Glimmering faintly.

**ag-glit-ter** (ə-glīt'tər) adj. Glittering; sparkling. —**ag-glit-te**.

**ag-glow** (ə-glō) adj. & adv. Glowing.

**ag-gly-con** (ə-glī'kōn) or **ag-gly-cone** (-kōn) n. A nonsug-nent of a glycoside that is resolvable through hydrolysis.

**ag-mi-nate** (āgmī-nāt, -nāt) also **ag-mi-nat-ed** (-nāt'ē) Lat. *agmen*, *agmin-*, multitude.] Bot. Gathered in clusters.

**ag-nail** (āgnāl) n. [ME *agnail*, corn < OE *agnægel*, a nail: *ang-*, tight + *nægel*, nail.] 1. A hangnail. 2. Swelling or sore around a fingernail or toenail.

**ag-nate** (āgnāt) adj. [Lat. *agnatus*, a relation on the father's part of *agnas*, to be born in addition to: *ad-*, to + *na*, born.] 1. Related on or descended from the male or father. 2. From a common source: **AKIN**. —n. A relative on the father's side only. —**ag-nat-ic** (āgnāt'ik) adj. —**ag-nat-i-cal** —**ag-nat-ion** n.

**Agni** (āgnē) n. [Skt. *agnih*, fire.] The Vedic god of fire and an ancestor of humans.

**ag-no-men** (āgnō'mən) n. pl. **-nom-i-na** (-nōm'ə-nə) [I to + *nomen*, name.] 1. An additional cognomen given to a citizen, often in honor of military victories. 2. A nickname.

**ag-no-sia** (āgnō'zhe) n. [NLat. < Gk. *agnōsia*, ignorance: *gnōsis*, knowledge < *gignōskein*, to know.] Pathologic loss of memory, sensory, or visual comprehension.

**ag-nos-tic** (āgnōs'tik) n. [ < Gk. *agnōstos*, unknown: *a-*, unknown, known < *gignōskein*, to know.] One who believes that can be no proof of the existence of God but does not deny possibility that God exists. —**ag-nos-tic** adj. —**ag-nos-ti-cal**

**ag-nos-ti-cism** (āgnōs'ti-siz-əm) n. 1. Philos. The doctrine of agnostics, holding that certainty or first or absolute truths are unattainable and that only perceptual phenomena are objects of knowledge. 2. A theological theory that does not deny God but denies the possibility of knowing Him.

**Agnus Dei** (āgnas dē'i, ān'yōdēs dā'e, āgnōōs') n. [Lat. Lamb of God, an emblem of Christ. 2. An iconographic representation of the Agnus Dei. 3. A liturgical prayer to Christ.]

**ago** (ə-gō) adj. & adv. [ME, p.p. of *agon*, to go away < O < (intensive) + *gān*, to go.] Earlier than the present time < three months ago > < died long ago >.

**ag-gog** (ə-gōg) adv. & adj. [ME *agogge* < OFr. *en gogue*, to ment.] In a state of excitement and keen anticipation.

**ag-gog** suff. var. of **AGOGUE**.

**à go-go** also **à-go-go** (ə-gō-gō) adv. [Fr., galore.] In a lively manner: **ENERGETICALLY**.

**ag-ogue** or **ag-gog** suff. [LLat. *agogus* < Gk. *agogos* < *a-* lead.] A substance that stimulates the flow of < hemagogue >.

**ag-one** (ə-gōn', ə-gōn') adj. & adv. [ME *agon*, p.p. of *ago* away. —see **AGO**.] Archaic. Gone by: **PAST**.

**ag-on-ic** (ā-gōn'ik, ə-gōn'-) adj. [ < Gk. *agōnos*: *a-*, not + *angle*.] Having no angle.

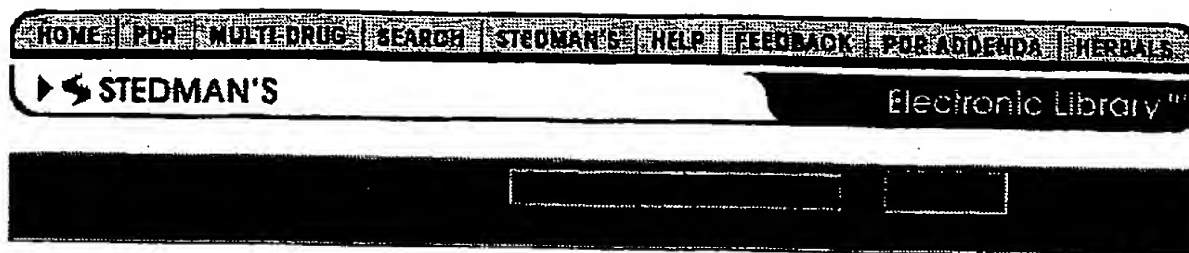
**ag-onic line** n. An imaginary line on the earth's surface connects points where the magnetic declination is zero.

**ag-on-ist** (āg'ō-nist) n. [Back-formation < **ANTAGONIST**.] 1. A muscle that contracts and is opposed by contraction in a muscle, the antagonist. 2. One involved in a struggle or comp

**ag-on-is-tic** (āg'ō-nis'tik) also **ag-on-is-ti-cal** (-ti-kəl) *agōnistikos* < *agōnistēs*, combatant < *agōn*, contest.] 1. Argu-tive: combative. 2. Strive to achieve effect. 3. Of or rel-

## **EXHIBIT B**

aggregate

<http://www.pdr/pdr/static.htm?path=pdr/stedmans/a/s01101.htm>

## Stedman's Medical Dictionary

### aggregate (ag're-gat)

1. To unite or come together in a mass or cluster. 2. The total of individual units making up a mass or cluster. [L. *ag-grego*, pp. *-atus*, to add to, fr. *greg* (greg-), a flock]

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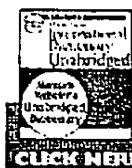
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Main Entry: **ag·gre·gate**

Pronunciation: 'a-grī-gāt

Function: *adjective*

**Eymology:** Middle English *aggregat*, from Latin *aggregatus*, past participle of *aggregare* to add to, from *ad-* + *greg-*, *grex* flock

**Date:** 15th century

: formed by the collection of units or particles into a body, mass, or amount :

**COLLECTIVE:** as a (1) : clustered in a dense mass or head <an *aggregate* flower> (2) :

formed from several separate ovaries of a single flower <*aggregate* fruit> **b** : composed of mineral crystals of one or more kinds or of mineral rock fragments **c** : taking all units as a whole <*aggregate* sales>

- *ag·gre·gate·ly* *adverb*

- *ag·gre·gate·ness* *noun*

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\ə as e in kitten

\ə as ur/er in further

\ə as a in ash

\ə as a in ace

\ə as o in mop

\ə as ou in out

\ə as ch in chin

\ə as e in bet

\ə as ea in easy

\ə as g in go

\ə as i in hit

\ə as i in ice

\ə as j in job

\(ŋ) as ng in sing

\ə as o in go

\ə as aw in law

\ə as oy in boy

\ə as th in thin

\ə as th in the

\ə as oo in foot

\ə as oo in foot

\ə as y in yet

\ə as si in vision

\* generally or often  
considered vulgar

|| usage restricted; consult  
a dictionary for more  
information

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Main Entry: <sup>2</sup>ag-gre-gate

Pronunciation: -ˈgāt-

Function: *transitive verb*

Inflected Form(s): -gat-ed; -gat-ing

Date: 15th century

1 : to collect or gather into a mass or whole

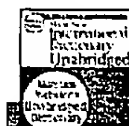
2 : to amount in the aggregate to : **TOTAL**

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l& as e in kitten  
l& as ur/er in further  
la as a in ash  
la as a in ace  
la as o in mop  
lau as ou in out  
chl as ch in chin

le as o in bet  
le as ea in easy  
lg as g in go  
li as i in hit  
li as i in ice  
li as j in job  
lŋ as ng in sing  
lo as o in go

lo as aw in law  
loi as oy in boy  
lth as th in thin  
lth as th in the  
loo as oo in loot  
loo as oo in foot  
ly as y in yet  
zhi as si in vision

\* generally or often  
considered vulgar

|| usage restricted; consult  
a dictionary for more  
information

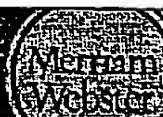
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Main Entry: <sup>3</sup>ag-gre-gate

Pronunciation: -gat

Function: noun

Date: 15th century

1 : a mass or body of units or parts somewhat loosely associated with one another

2 : the whole sum or amount : SUM TOTAL

3 a : an aggregate rock b : any of several hard inert materials (as sand, gravel, or slag) used for mixing with a cementing material to form concrete, mortar, or plaster c : a clustered mass of individual soil particles varied in shape, ranging in size from a microscopic granule to a small crumb, and considered the basic structural unit of soil

4 : SET 21

5 : MONETARY AGGREGATE

- in the aggregate : considered as a whole : COLLECTIVELY <dividends for the year amounted in the aggregate to 25 million dollars>

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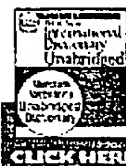
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\& as e in kitten  
\& as ur/er in further  
\& as a in ash  
\& as a in ace  
\& as o in mop  
\& as ou in out  
\& as ch in chin

\& as e in bet  
\& as ea in easy  
\& as g in go  
\& as i in hit  
\& as l in lee  
\& as j in job  
\& as ng in sing  
\& as o in go

\& as aw in law  
\& as oy in boy  
\& as th in thin  
\& as th in the  
\& as oo in loot  
\& as oo in foot  
\& as y in yet  
\& as si in vision

\* generally or often  
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## **EXHIBIT D**

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## aggregate

<zoology> A group of species, other than a subgenus, within a genus, or a group of subspecies within a species. An aggregate may be denoted by a group name interpolated in parentheses.

(09 Jan 1998)

Previous: agglutination test, agglutinative, agglutinins, aggravation, aggrecanase

Next: aggregate fruit, aggregation, aggression, aggression, aggressiveness

Q On-line Medical Dictionary